

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
2013 MAR -6 PM 4:18

DAVID FARKAS

Plaintiff

vs.

VITIAL RECOVERY SERVICES, INC

Defendant

Case Number:

CIVIL COMPLAINT

13 CV 1508

JUDGE SEIBEL

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, David Farkas, by and through his undersigned counsel, Bruce K. Warren, Esquire of Warren Law Group, P.C., complaining of Defendant, and respectfully avers as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiff, David Farkas, is an adult natural person and he brings this action for actual and statutory damages and other relief against Defendant for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337.
3. Venue in this District is proper in that Plaintiff resides in this district.

III. PARTIES

4. Plaintiff, David Farkas, (hereafter, Plaintiff) is an adult natural person residing in Monsey, NY. At all times material and relevant hereto, Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a (2).

5. Defendant, Vital Recovery Services, Inc., (hereafter, Defendant), at all times relevant hereto, is and was a corporation engaged in the business of collecting consumer debt with a primary address located at 3795 Data Drive, Suite 200, Norcross, GA 30092.

6. Defendant is engaged in the collection of debts from consumers using the telephone and mail. Defendant, is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

IV. FACTUAL ALLEGATIONS

7. On or about July 5, 2012 Plaintiff received a letter from Defendant stated they were now the holder of the consumer debt and demanded full payment of the alleged consumer debt. **See EXHIBIT “A” (notice) attached hereto.**

8. The Plaintiff is said to owe \$90,707.84.

9. On this letter JPM Chase Mortgage Banking is listed as the current creditor.

10. Nowhere on this letter is Defendant listed as a holder on the said alleged consumer debt.

11. On or about July 31, 2012 Plaintiff wrote a letter to the Defendant asking them to validate the alleged consumer debt in question. **See EXHIBIT “B” (notice) attached hereto.**

12. On or about August 6, 2012 Plaintiff received a letter from the Defendant offering a settlement of \$27, 212.34 without answering the Plaintiff's request. **See EXHIBIT "C" (notice) attached hereto.**

13. Defendant ignored the Plaintiff's request and never validated the alleged consumer debt.

14. Defendant continued their collection effects knowing the Plaintiff was disputing this alleged debt.

15. The Defendant acted in a false, deceptive, misleading and unfair manner when they engaged in conduct the natural consequences of which is to harass, oppress, or abuse such person in connection with the collection of a debt.

16. The Defendant knew or should have known that their actions violated the FDCPA. Additionally, Defendant could have taken the steps necessary to bring their and their agent's actions within compliance of the FDCPA, but neglected to do so and failed to adequately review those actions to insure compliance with the law.

17. At all times pertinent hereto, Defendant was acting by and through their agents, servants and/or employees, who were acting with the scope and course of their employment and under the direct supervision and control of Defendant herein.

18. At all times pertinent hereto, the conduct of Defendant, as well as their agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

19. As a result of Defendant's, conduct, Plaintiff has sustained actual damages, including, but not limited to, injury to Plaintiff's reputation, invasion of privacy, damage to Plaintiff's credit, out-of-pocket expenses, physical, emotional and mental pain and anguish and

pecuniary loss and he will continue to suffer same for an indefinite time in the future, all to his great detriment and loss.

COUNT I – FDCPA

20. The above paragraphs are hereby incorporated herein by reference.

21. At all times relevant hereto, Defendant was attempting to collect an alleged debt which was incurred by Plaintiff for personal, family or household purposes and is a “debt” as defined by 15 U.S.C. § 1692a(5).

22. The foregoing acts and omissions constitute violations of the FDCPA, including but not limited to, violations of:

- | | |
|---------------|--|
| §§ 1692d: | Any conduct the natural consequence of which is to harass, oppress, or abuse any person |
| §§ 1692e: | Any other false, deceptive, or misleading representation or means in connection with the debt collection |
| §§ 1692e(10): | Any false representation or deceptive means to collect a debt or obtain information about a consumer |
| §§ 1692f: | Any unfair or unconscionable means to collect or attempt to collect the alleged debt |
| §§ 1692g(b): | Collector must cease collection efforts until debt is validated |

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant, Vital Recovery Services, Inc. for the following:

- a. Actual damages;g

- b. Statutory damages pursuant to 15 U.S.C. § 1692k;
- c. Reasonable attorney's fees and litigation expenses, plus costs of suit; and
- d. Such additional and further relief as may be appropriate or that the interests of justice require.

V. JURY DEMAND

Plaintiff hereby demands a jury trial as to all issues herein.

Respectfully submitted,

WARREN LAW GROUP, PC

Date: March 1, 2013


BY: /s/ Bruce K. Warren
Bruce K. Warren, Esquire

Warren Law Group, PC
58 Euclid Street
Woodbury, NJ 08096
P: (856)848-4572
F: (856)324-9081
Attorney for Plaintiff

EXHIBIT “A”

PO Box 923748
Norcross, GA 30010-3748
RETURN SERVICE REQUESTED
July 5, 2012

VITAL RECOVERY SERVICES, INC.
PO Box 923748
Norcross, GA 30010-3748
(866)489-8028

Original Creditor: JPM Chase Mortgage
Banking
Current Creditor: JPM Chase Mortgage
Banking

New Account #: [REDACTED]
Original Account#: [REDACTED]
Last Payment Date: July 27, 2007
Total Balance Due: \$90707.84

0001 016323168

**IMPORTANT NOTICE:
PLEASE RESPOND**

YOUR ACCOUNT HAS BEEN PLACED WITH US FOR COLLECTION

Dear JOEL FARKAS:

VITAL RECOVERY SERVICES, INC. is now servicing the Mortgage/Home Equity account noted above that is held by JPM Chase Mortgage Banking. They have placed it with us to collect it for them.

Send your full payment with the coupon below or call us. We would like to discuss the matter with you.

Unless you notify Vital Recovery Services, Inc. within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, Vital Recovery Services, Inc. will assume this debt is valid. If you notify Vital Recovery Services, Inc. in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, Vital Recovery Services, Inc. will obtain verification of the debt or obtain a copy of a judgment and will mail you a copy of such judgment or verification. If you request of Vital Recovery Services, Inc. in writing within 30 days after receiving this notice Vital Recovery Services, Inc. will provide you with the name and address of the original creditor, if different from the current creditor.

For further information or to pay by phone, please call Vital Recovery Services, Inc. at (866)489-8028.

This letter is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. This communication is from a debt collector.

To make a payment online by check or credit card: <https://pay.vitalrecovery.com/>
Sign on using payment id: 01632316830

NEW YORK CITY RESIDENTS: John Jette, Vice President of Operations, B: 678-578-1045.
New York City Department of Consumer Affairs License Number: 1126452

↓ Detach Here And Remit Lower Portion With Payment In The Enclosed Reply Envelope ↓

Make check payable to:

VITAL RECOVERY SERVICES, INC.

7062012

NEW ACCT #: [REDACTED]

TOTAL BALANCE DUE: \$90707.84

Amount Paid: [REDACTED]

Home Phone: _____
Daytime Phone: _____

JOEL FARKAS
[REDACTED]

0001 016323168
VITAL RECOVERY SERVICES, INC.
PO BOX 923747
NORCROSS, GA 30010-3747

☐ Check here if address has changed.
Please note changes on reverse side.

EXHIBIT "B"

July 31, 2012

From:
Joel Farkas

[REDACTED]

To:
VITAL RECOVERY SERVICES, INC.
3795 Data Dr # 200
Norcross, GA 30092

Re: Validation of Debt for Ref: # [REDACTED]

TO: Collection Manager,

This letter is lawful notification to VITAL RECOVERY SERVICES, INC. as the first step of due process of law pursuant to the Bill of Rights and the Federal Constitution, in particular Articles I, IV, V, VII, and IX of the Amendments. Please take Notice that I Joel Farkas CONDITIONALLY ACCEPTS YOUR CLAIM UPON BONA FIDE PROOF (in good faith and without deceit) that your claim is lawful and valid.

Please take lawful notice that in order to effect this BONA FIDE PROOF, VITAL RECOVERY SERVICES, INC., via a legally authorized representative is lawfully required and hereby demanded to respond point by point in Truth, Fact, and Evidence to each and every item set forth in this correspondence pursuant to the Fair Credit Reporting Act 15 U.S.C. §1681, before I or my Authorized Representative can make an offer to settle VITAL RECOVERY SERVICES, INC.'s alleged claim in this matter.

Please provide the following:

1. A copy of the contract that binds myself, a Natural Person, and VITAL RECOVERY SERVICES, INC. a creature of the State who is defined as an ARTIFICIAL PERSON:
2. PROOF OF CLAIM via certified, notarized, specific, and relevant documents that VITAL RECOVERY SERVICES, INC.:
 - a. Has any contract or agreement which lawfully compels this Natural Person to accept and/or respond to any communications from VITAL RECOVERY SERVICES, INC.
 - b. Is a lawful and valid party in interest in this matter.
 - c. Is not an unrelated third party.
 - d. Is not an unrelated third party debt collector.
 - e. Did not purchase this alleged debt for an agreed upon cost from an alleged other COMPANY, CORPORATION, or Party.
 - f. Is not acting on its own behalf and/or interests in this instant matter.
 - g. When and how did you get my permission to obtain my consumer credit report.

Please have your legally authorized representative respond via signed affidavit, under penalty of perjury, and enclose copies of all relevant documents that demonstrate BONA FIDE PROOF OF YOUR CLAIM within 10 days of receipt of this letter, via certified mail.

This is not a request for "verification" or proof of my mailing address, but a request for "VALIDATION" made pursuant to the above named Title and Section.

If your offices fail to respond to this validation request within 10 days from the date of your receipt, all references to this account must be deleted and completely removed from all of my 3 consumer credit report files Experian, Trans Union, Equifax, and a copy of such deletion request shall be sent to me immediately.

Failure to provide a lawfully valid response, as stipulated, this would be in agreement that VITAL RECOVERY SERVICES, INC. and their representatives have no BONA FIDE PROOF OF CLAIM in this instant matter which is your lawful, legal and binding agreement with and admission to this fact as true, correct, legal, lawful and binding upon you, in any court, anywhere in America, without your protest or objection or that of those who represent you. Your silence is your acquiescence.

Dated: July 31, 2012

All Rights Reserved,
Respectfully submitted,

By: _____
Joel Farkas, American Citizen
Authorized Representative

Sent by Certified Mail # 7011 2970 0003 5227 7197

U.S. Postal Service TM			
CERTIFIED MAILTM RECEIPT			
(Domestic Mail Only; No Insurance Coverage Provided)			
For delivery information visit our website at www.usps.com			
NORCROSS GA 30016			
OFFICIAL USE			
Postage	\$	\$0.45	0063
Certified Fee		\$2.95	05
Return Receipt Fee (Endorsement Required)		\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)		\$0.00	
Total Postage & Fees	\$	\$3.40	08/01/2012
Sent To P RECOVERY			
Street, Apt. No., or PO Box No.			
City, State, ZIP+4			
NORCROSS GA 30016			

EXHIBIT “C”

